

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
CASE NO. 5:22-cv-68-BO

YOLANDA IRVING, et al.)	
)	
Plaintiffs,)	MOTION FOR EXTENSION OF
)	TIME TO TAKE EXPERT
v.)	DEPOSITION AND TO FILE
)	DISPOSITIVE MOTIONS, AND
)	FOR ORDER REQUIRING
THE CITY OF RALEIGH, et al.)	PLAINTIFFS TO MAKE
)	EXPERT AVAILABLE FOR
Defendants.)	DEPOSITION IN RALEIGH
)	
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Pursuant to Federal Rule of Civil Procedure 6(b), and the Court’s inherent powers, Defendants move, with the consent of Plaintiffs, for entry of an order extending by 30 days the deadlines (1) for Defendants’ to re-notice and complete the deposition of Plaintiffs’ Expert, David T. Sweeney, and to file Phase I dispositive motions. Defendants also move for entry of an order requiring Plaintiffs to make Mr. Sweeney available for his deposition in Raleigh, at their own expense. In support of this Motion, Defendants show the Court the following:

1. Plaintiffs filed this action on February 22, 2022. [DE 2](#).
2. Plaintiffs twice amended their complaint. DE [41](#), [93](#). After the second amendment, this litigation now includes 11 plaintiffs and 17 defendants.
3. Discovery has been bifurcated, with Phase I discovery relating to the claims against the Individual Defendants, and Phase II discovery relating to the claims against the City of Raleigh and Official Capacity Defendants. See [DE 69](#).

4. On July 6, 2022, the Court entered a scheduling order setting the deadline for completion of Phase I discovery as December 20, 2022. [DE 69](#).

5. On January 3, 2023, the Court entered an Order Granting Consent Motion to Extend Discovery Deadlines for the completion of Phase 1 discovery as of March 3, 2023 and Phase 1 dispositive motions filed by March 31, 2023. [DE 156](#).

6. On February 22, 2023, Counsel for Defendant Omar Abdullah (“Defendant Abdullah”) noticed the deposition of Plaintiffs’ Expert, David T. Sweeney for March 1, 2023, in-person in Seattle, Washington where Mr. Sweeney resides. Plaintiffs’ counsel had informed counsel for Defendants that Mr. Sweeney was available on March 1.

7. On February 23, 2023, Counsel for Defendant SEU Officers David Mead, Jesus Ortiz, Kyle Perrin, Michael Mollere, Kyle Thompson, Vincent Debonis, Daniel Twiddy, Thomas Webb, David McDonald and David Garner (“Defendant SEU Officers”) cross-noticed the deposition for March 1, 2023, in-person in Seattle, Washington where Mr. Sweeney resides.

8. On February 24, 2023, Counsel for Plaintiffs filed a Motion to Enforce Stay of Discovery with Respect to Defendant Abdullah and Motion for Protective Order. [DE 182](#).

9. In said Motion, Counsel for Plaintiffs indicated that they would instruct their witness not to sit for the deposition as noticed by Counsel for Defendant Abdullah, however, it was unclear from Plaintiffs’ Motion [\[DE 182\]](#) whether the witness would be made available to Counsel for Defendant SEU Officers.

10. On February 28, 2023 Counsel for Defendant SEU Officers confirmed with Counsel for Plaintiffs that they were proceeding with the deposition on Mr. Sweeney as Noticed. Counsel for Plaintiffs inquired whether counsel for the SEU Defendants would take the deposition in-person; counsel confirmed that counsel for the SEU Defendants would take the deposition in person, and that counsel for Defendant Abdullah also would attend in person.

11. On February 27 and 28, 2023, respectively, Counsel for Defendant Abdullah and Defendant SEU Officers traveled to Seattle, Washington prepared to take the deposition of Mr. Sweeney as part of Phase I discovery.

12. On the morning of March 1, 2023, Plaintiffs' counsel notified all counsel that Mr. Sweeney was ill, and his deposition would have to be rescheduled. Counsel for Plaintiffs noted that Mr. Sweeney and his family had been travelling the week before, that his wife had been ill for the past few days, and that Mr. Sweeney was suffering from nausea, vomiting, diarrhea, chills, and fever. This issue was not raised with counsel for Defendants before the morning of March 1, 2023, after counsel for the SEU Defendants and Defendant Abdullah already had travelled to Seattle.

13. Phase I discovery in this matter is set to close March 3, 2023, with dispositive motions set to be filed by March 31, 2023.

14. Pursuant to his Phase I expert report, it is believed that Mr. Sweeney has opinions about the conduct of the Individual Defendants in this matter. His deposition testimony may impact the dispositive motions that the Individual Defendants may file, and may impact the merits of those motions.

15. Because the Individual Defendants have not had an opportunity to take the deposition of Mr. Sweeney, despite properly noticing, preparing, and traveling to take the deposition, this Motion seeks an extension of the discovery deadlines specifically related to the deposition of Mr. Sweeney and dispositive motions.

16. Defendants, with the consent of Plaintiffs, respectfully request the following:

- (1) A 30-day extension of the deadline for the Individual Defendants to complete their deposition of Mr. Sweeney.
- (2) A 30-day extension of the deadline to file dispositive motions.¹

¹ Counsel for Defendants also note that they have acted diligently in attempting to conduct a Rule 30(b)(6) deposition of Emancipate NC, Inc. (“Emancipate”), and of Plaintiffs’ psychological injury expert, Dr. Mary Anne Etheridge, before the March 3 discovery deadline, and also note that the scheduling of these depositions are subject to motions currently pending before this Court. See DE 166, 167.

Counsel for the SEU Defendants and for Defendant Abdullah initially noticed and cross-noticed the deposition of Emancipate for January 4, 2023, rescheduled the deposition for January 23, 2023, following a request by counsel for additional time to respond to related to discovery and to reschedule. Emancipate then refused to participate and filed a motion for protective order that is pending before the Court. Due to Emancipate’s failure to argue its motion for protective order at the February 14, 2023 hearing of pending motions in Elizabeth City, and thinking that Emancipate may have abandoned same, counsel for the SEU Defendants and Defendant Abdullah re-noticed and cross-noticed the deposition for March 2, 2023. Emancipate responded that it refused to appear based on its pending motion for protective order.

Similarly, counsel for defendants requested dates for a deposition of Dr. Etheridge before the current discovery deadline of March 3. The only time Plaintiffs offered before March 3 was from 9am-12pm on Friday, February 24, 2023—a date when Plaintiffs already had noticed the depositions of SEU Defendants David McDonald and Daniel Twiddy. Plaintiffs also noted that Dr. Etheridge would be available for a full day on

17. The Parties are not seeking an extension of the March 8 deadline for commencing mediation.

18. The extension requests are made in good faith and not for the purpose of delay.

19. For the reasons set forth above, good cause is shown for the requested extensions.

20. Defendants also seek additional relief to which Plaintiffs do not consent.

21. Because counsel for the SEU Defendants and Defendant Abdullah incurred travel costs for the deposition, which could have been avoided if they had been more timely informed of Mr. Sweeney's exposure and illness, Defendants request that the Court order Plaintiffs to make Mr. Sweeney available for his deposition in Raleigh, North Carolina, at the expense of Plaintiffs, rather than Defendants. Under the circumstances of this case, where Mr. Sweeney had been traveling the week prior to his deposition, and where his wife had become ill for several days before the deposition, counsel for Defendants could have been informed about the possibility that Mr. Sweeney could not attend a March 1 deposition because of illness and/or exposure, before the morning of March 1, when they could have been able to avoid at least some of the travel costs to appear for the March 1 deposition. Because counsel for Defendants were not informed of this issue until the morning of the deposition, after they already had incurred travel costs,

March 13. Because three hours on February 24 was insufficient for a complete deposition of Dr. Etheridge, Defendants noticed the deposition for March 13.

it would be appropriate for Plaintiffs to bear the costs of travel for a re-scheduled deposition.

22. Counsel for Defendants conferred in good faith with counsel for Plaintiffs, requesting that they voluntarily make Mr. Sweeney available for a deposition in Raleigh North Carolina. Plaintiffs have declined to do so.

WHEREFORE, Defendants respectfully request that the Court enter an order extending the Phase I discovery deadlines in this matter as follows: (1) complete the deposition of Plaintiffs' Expert, David T. Sweeney on or before Monday, April 3, 2023; (2) file dispositive motions on or before Monday, May 1, 2023. Defendants also respectfully request that the Court order Plaintiffs to make Mr. Sweeney available for a deposition in Raleigh, North Carolina, on or before April 3, 2023, at their own expense.

Respectfully submitted,

This the 3rd day of March, 2023.

/s/ Leslie C. Packer

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CERTIFICATE OF SERVICE

I hereby certify that on March 3, 2023, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which sends notification of such filing to all counsel of record.

/s/ Leslie C. Packer
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Michelle A. Liguori

Counsel for SEU Officer Defendants